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ARTICLES

The Marriage Penalty/Bonus Debate: Legislative Issues in Black and White

*Dorothy A. Brown**

INTRODUCTION

Many scholars have debated the marriage penalty/bonus question.¹ Those scholars have proposed solutions ranging from individual filing requirements to increased child care deductions.² However, all proposed solutions have a limited impact because they are built upon a model in which all women are assumed to be the same. If a solution to the marriage penalty/bonus issue is to help women in today's society, their differences must be explored.

For the most part, the literature treats all women as marginal wage earners who are discouraged from working in the paid labor market. Thus, solutions are designed to encourage women to work in the paid labor market. However, these solutions do not address the problem of the many women who are already working full-time in the paid labor market.

Part I of this article begins by briefly describing the marriage penalty/bonus issue. It then provides Census Bureau data that shows that African-American households are more likely to pay a marriage penalty and White households are more likely to receive a marriage bonus. Part II then describes proposed legislative solutions to the marriage penalty/bonus issue. Part II analyzes the proposed

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¹ See, e.g., Dorothy A. Brown, *Race, Class, and Gender Essentialism in Tax Literature: The Joint Return*, 54 WASH. & LEE L. REV. 1469, 1471 n.2 (1997) (citing various articles that discuss the marriage penalty/bonus issue).

² *Id.* at 1484-88 (describing the literature's proposed solutions).

legislative solutions based on the differences in African-American and White households. This article concludes by noting that any solution to the marriage penalty/bonus issue must take into account the racial and class distinction among women.

I. THE MARRIAGE PENALTY/BONUS DILEMMA

A. Introduction

Simply put, the marriage penalty occurs whenever a married couple pays higher federal income taxes as a result of being married than they would have paid had they remained single. The marriage bonus occurs whenever a married couple pays less in federal income taxes as a result of being married than they would have paid had they remained single. The marriage penalty/bonus issue is largely a result of the different tax brackets used by single taxpayers and married taxpayers.³

The marriage penalty is the highest when household income is contributed roughly equally by each spouse.⁴ Taxpayers earning roughly equal amounts are penalized and pay a marriage penalty because the married tax brackets are not double the single tax brackets.⁵ The marriage bonus is the highest when household income

³ See James E. Maule, *Tax and Marriage: Unhitching the Horse and the Carriage*, 67 TAX NOTES TODAY 539, 544-46 (1995) (explaining phase-outs and other limitations that cause the marriage penalty). Although married taxpayers can also file separately, there is generally not a tax advantage in doing so. See Brown, *supra* note 1, at 1473 n.10.

⁴ See Brown, *supra* note 1, at 1479 (indicating that as a percentage of income, the marriage penalty associated with the earned income tax credit can be quite high due to the earned income tax credit's phase-out provisions being identical for married and single individuals).

⁵ Section 1 of the 1986 Internal Revenue Code states:

(a) Married Individuals Filing Joint Returns and Surviving Spouses — There is hereby imposed on the taxable income of-

is contributed by only one spouse.⁶ Because the married tax brackets allow for more income at each tax bracket given that the household is composed of two instead of one, the marginal tax rate will be lower given the same total household income.

B. Examples

Let's consider a couple of examples.

-
- (1) every married individual (as defined in section 143) who makes a single return jointly with his spouse under section 6013, and
 (2) every surviving spouse (as defined in section 2(a)),
 a tax determined in accordance with the following tables:

If taxable income is:	The tax is:
Not over \$36,900	15% of taxable income.
Over \$36,900 but not over \$89,150	\$5,535, plus 28% of the excess over \$36,900.
Over \$89,150 but not over 140,000	\$20,165, plus 31% of the excess over \$89,150.
Over \$140,000 but not over \$250,000	\$35,928.50 plus 36% of the excess over \$140,000.
Over \$250,000	\$75,528.50 plus 39.6% of the excess over \$250,000.

(c) Unmarried Individuals (Other Than Surviving Spouses and Heads of Households).--There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over \$22,100	15% of taxable income.
Over \$22,100 but not over \$53,500	\$3,315, plus 28% of the excess over \$22,100.
Over \$53,500 but not over \$115,000	\$12,107, plus 31% of the excess over \$53,500.
Over \$115,000 but not over \$250,000	\$31,172, plus 36% of the excess over \$115,000.
Over \$250,000	\$79,772, plus 39.6% of the excess over \$250,000.

⁶ See Brown, *supra* note 1, at 1479.

Example #1: John and Sally Johnson are married taxpayers with taxable income of \$100,000. Their tax liability under § 1(a) is \$23,528.50.⁷ Before they were married they each had taxable income of \$50,000, and their individual tax liability under § 1(c) is \$11,127⁸ for a total liability of \$22,254. As a result of marriage, John and Sally would have a higher federal income tax liability than if they remained single. They pay a marriage penalty.

Example #2: Peter and Cathy are married taxpayers with taxable income of \$100,000. Their tax liability under § 1(a) is \$23,528.50. Before they were married, Cathy had taxable income of \$100,000 and Peter had no taxable income. Cathy's tax liability under § 1(c) is \$26,522.⁹ As a result of marriage Cathy and Peter have a lower federal income tax liability than if they had remained single. They receive a marriage bonus.

C. Marriage Penalty/Bonus Calculations

Reprinted below is Table 1, which describes the marriage penalty/bonus resulting from the joint return.¹⁰

⁷ Taxable income after deductions is \$100,000. The tax is calculated as follows:

$$\begin{aligned} & \$20,165 + .31(\$100,000 - \$89,150) = \\ & \$20,165 + .31(\$10,850) = \\ & \$20,165 + \$3,363.5 = \\ & \$23,528.50 \text{ total tax liability.} \end{aligned}$$

⁸ Tax computations under § 1(c) are as follows:

$$\begin{aligned} & \$3,315 + .28(\$50,000 - \$22,100) = \\ & \$3,315 + .28(\$27,900) = \\ & \$3,315 + \$7,812 = \$11,127. \end{aligned}$$

⁹ The tax computation under § 1(c) are as follows:

$$\begin{aligned} & \$12,107 + .31(\$100,000 - \$53,500) = \\ & \$12,107 + .31(\$46,500) = \\ & \$12,107 + \$14,415 = \$26,522. \end{aligned}$$

¹⁰ See John Brozovsky & A. J. Cataldo II, *The Marriage Tax Penalty: Inequities and Tax Planning Opportunities*, OHIO CPA J., Dec. 1993, at 21-22 (table reprinted with permission of publisher). This chart describes the marriage bonus (or

Table 1.1
**THE MARRIAGE TAX (PENALTY)/BONUS BY INCOME
 & ALLOCATION BETWEEN SPOUSES/SINGLES (1993).**

INCOME ALLOCATION						
INCOME	0%/100%	10%/90%	20%/80%	30%/70%	40%/60%	50%/50%
\$20,000	728	428	128	(173)	(180)	(180)
\$30,000	968	278	(173)	(180)	(180)	(180)
\$40,000	2,268	1,148	321	(180)	(180)	(180)
\$50,000	3,282	1,882	1,075	425	(226)	(466)
\$60,000	3,296	1,602	815	35	(746)	(1,285)
\$70,000	3,596	1,568	555	(356)	(1,266)	(1,285)
\$80,000	3,896	1,708	428	(746)	(1,285)	(1,285)
\$90,000	4,196	1,848	408	(1,032)	(1,285)	(1,285)
\$100,000	4,497	1,990	390	(970)	(1,270)	(1,284)
\$125,000	4,695	1,590	(411)	(1,195)	(1,570)	(1,857)
\$150,000	5,945	1,887	(970)	(1,420)	(1,857)	(1,859)
\$200,000	5,990	882	(84)	(3,364)	(4,312)	(4,312)
\$500,000	6,164	(4,203)	(8,789)	(11,642)	(13,442)	(15,024)

What the table does not disclose is the full extent of the race, class, and gender implications of the marriage penalty/bonus which has been the subject of my prior research.¹¹ Although the table suggests that households with \$500,000 contributed equally by

penalty) paid by married couples when compared with what they would have paid had they remained single. For example, a sole wage earner household (0%/100%) earning \$20,000 of income would receive a marriage bonus of \$728.00. The chart ignores the Earned Income Tax Credit's marriage penalty or marriage bonus.

¹¹ See generally Brown, *supra* note 1; see also Dorothy A. Brown, *The Marriage Bonus/Penalty in Black and White*, in *TAXING AMERICA* 45, 45-57 (Karen B. Brown & Mary Louise Fellows eds., 1996).

spouses would result in a \$15,024 marriage penalty, the table does not tell us the likelihood of such a household existing. The data discussed herein suggests that such couples are rare indeed. Further, the Internal Revenue Service does not compile any data by race.¹² As a result, Census Bureau data will be used as a proxy.

D. Marriage Penalty/Bonus Calculations in Black and White

1. Household Contributions of African-American Spouses

The marriage penalty/bonus is a function of the percentage of total taxable household income that is contributed by husbands and wives. The penalty is the greatest where husbands and wives contribute equal amounts and the marriage bonus is the greatest where only one spouse works in the paid labor market and contributes all of the total taxable household income. A 1990 study by the U.S. Commission on Civil Rights found that married African-American women contribute higher percentages to household income than married White women.¹³ My research, which is based upon Census Bureau data and supports that finding, is reproduced below.¹⁴

¹² See Dorothy A. Brown, *Split Personalities: Tax Law and Critical Race Theory*, 19 W. NEW ENG. L. REV. 89, 91 (1997).

¹³ See U.S. COMM'N ON CIV. RTS., *THE ECONOMIC STATUS OF BLACK WOMEN: AN EXPLORATORY INVESTIGATION*, 99 (1990) (hereinafter U.S. COMM'N ON CIVIL RIGHTS).

¹⁴ See Brown, *supra* note 1, at 1492 (reprinted with permission of publisher). The information in Tables 3.1-3.6 is from 1990 Public Use Micro-Data Sample and is based upon a 5% sample of the population of same race couples (on file with author). The information is collected by the Census Bureau; however, it is not published. Census Bureau data is used herein because the Internal Revenue Service does not keep data based upon race.

Table 1.2
HOUSEHOLD CONTRIBUTION BY
AFRICAN-AMERICAN WIVES

Household Income	90% to 100%	80% to 90%	70% to 80%	60% to 70%	50% to 60%	40% to 50%	30% to 40%	20% to 30%	10% to 20%	0% to 10%
\$0 to 10,000	42.27	1.40	1.60	1.57	1.83	2.89	2.23	2.05	2.36	41.81
\$10,001 to 20,000	22.31	2.19	2.53	2.88	4.45	7.63	6.22	5.41	5.30	41.09
\$20,001 to 30,000	10.37	1.68	2.70	4.15	8.32	15.70	12.94	9.17	6.48	28.51
\$30,001 to 40,000	5.28	1.39	2.41	4.73	11.37	21.35	15.57	10.40	6.65	20.84
\$40,001 to 50,000	2.43	1.01	2.00	5.71	13.28	23.46	20.93	11.86	6.23	13.07
\$50,001 to 60,000	1.06	.61	1.98	5.54	13.49	29.39	22.04	12.08	5.67	8.16
\$60,001 to 70,000	.75	.34	1.87	5.96	15.28	31.21	22.42	12.12	4.41	5.64
\$70,001 to 80,000	.82	.57	1.17	5.27	16.17	31.76	24.19	10.43	3.80	5.82
\$80,001 to 90,000	.47	.19	1.72	4.48	16.20	33.26	21.76	12.75	3.77	5.40
\$90,001 to 100,000	.65	.54	2.11	4.63	11.42	31.01	22.71	13.87	7.15	5.90
\$100,001 to 120,000	1.20	1.62	2.12	5.37	8.59	27.56	23.20	16.32	5.98	8.04
\$120,001 & over	5.46	2.56	2.55	3.07	4.63	17.14	9.09	11.43	12.13	31.94

For households of up to \$10,000, 42.27% of African-American wives contribute between 90 and 100% of total household income. At the same income level, 41.81% of African-American wives contribute up to 10% of total household income. Notice the

significantly high percentages of African-American wives who contribute between 40 and 60% to total household income. Those are the highest marriage penalty categories. Also, note the significantly low percentages of wives who contribute either between 90 and 100% of their household income at the greater than \$60,000 level as well as the wives who contribute between 0 and 10% of their household income. Those are the marriage bonus categories.

2. Household Contributions of White Spouses¹⁵

Table 1.3 HOUSEHOLD CONTRIBUTIONS BY WHITE WIVES										
Income Levels	90% to 100%	80% to 90%	70% to 80%	60% to 70%	50% to 60%	40% to 50%	30% to 40%	20% to 30%	10% to 20%	0% to 10%
\$0 to 10,000	43.08	1.03	1.17	1.16	1.35	2.44	1.75	1.66	1.92	44.45
\$10,001 to 20,000	24.67	1.71	2.06	2.45	3.23	5.95	5.06	4.93	5.35	44.59
\$20,001 to 30,000	10.31	1.30	1.96	2.75	4.90	9.47	9.40	8.46	8.44	43.00
\$30,001 to 40,000	4.11	.89	1.47	2.69	5.99	13.08	12.80	11.21	10.16	37.60
\$40,001 to 50,000	1.82	.57	1.17	2.69	7.11	15.13	16.48	13.05	10.76	31.23
\$50,001 to 60,000	.95	.42	.90	2.64	7.85	18.50	18.42	13.82	10.41	26.09
\$60,001 to 70,000	.70	.32	.83	2.57	8.35	19.54	19.09	15.53	9.60	23.47
\$70,001 to 80,000	.71	.28	.61	2.43	7.97	18.93	20.63	13.43	9.60	25.39
\$80,001 to 90,000	.64	.27	.64	2.17	7.85	19.19	17.95	15.21	10.17	25.91
\$90,001 to 100,000	.84	.30	.80	2.05	6.35	15.61	14.95	13.89	9.77	35.45
\$100,001 to 120,000	.73	.41	1.00	2.39	5.54	13.82	13.86	14.12	12.21	35.91
\$120,001 & over	1.20	.76	1.35	1.51	2.47	6.76	6.35	9.11	12.79	57.70

One can again observe 43.08% of White wives contributing between 90 and 100% of total household income at the \$10,000 and

¹⁵ See *id.* at 1496 (reprinted with permission of publisher).

under category, as well as 44.45% of White wives contributing between 0 and 10% of total household income at the \$10,000 and under category. Note the significantly high percentages of White wives at all income levels that contribute between 0 and 10% to household income. That is the marriage bonus category. In the greatest marriage penalty category, namely where wives contribute between 40 and 60% to total household income, the percentage of White wives in those categories is much lower than those in the marriage bonus category.

3. Marriage Bonus in Black and White¹⁶

Table 1.4 GREATEST MARRIAGE BONUS BY INCOME LEVEL		
Household Income	WHITE Income Split	AFRICAN-AMERICAN Income Split
	100/0% - 90/10%	100/0% - 90/10%
\$0-10,000	87.49%	84.06%
\$10,001-20,000	69.11%	63.25%
\$20,001-30,000	53.21%	38.81%
\$30,001-40,000	41.63%	26.07%
\$40,001-50,000	32.87%	15.42%
\$50,001-60,000	27.00%	9.22%
\$60,001-70,000	24.15%	6.37%
\$70,001-80,000	26.06%	6.59%
\$80,001-90,000	26.54%	5.88%
\$90,001-100,000	35.98%	6.55%
\$100,001-120,000	36.61%	9.24%
\$120,001-over	58.88%	37.40%

At every income level, there are fewer percentages of African-American couples who receive a marriage bonus than White couples. Conversely, at every income level, there are higher percentages of White couples who receive the marriage bonus, than do African-American couples. In some instances, five times as many Whites receive a marriage bonus than African-Americans.

¹⁶ See *id.* at 1500 (reprinted with permission of publisher).

With respect to middle-income African-Americans, they are least likely to receive a marriage bonus. African-Americans earning over \$120,000 are the most likely to receive a marriage bonus. Similarly, White households earning over \$120,000 are most likely to receive a marriage bonus.

4. Marriage Penalty in Black and White¹⁷

Table 1.5 GREATEST MARRIAGE PENALTY BY INCOME LEVEL		
Household Income	WHITE Income Split	AFRICAN-AMERICAN Income Split
	60%/40% - 50%/50%	60%/40% - 50%/50%
\$0-10,000	3.97%	5.06%
\$10,001-20,000	9.58%	12.65%
\$20,001-30,000	15.18%	25.11%
\$30,001-40,000	19.38%	33.16%
\$40,001-50,000	23.33%	38.33%
\$50,001-60,000	26.72%	43.21%
\$60,001-70,000	28.17%	46.76%
\$70,001-80,000	27.79%	49.23%
\$80,001-90,000	27.17%	49.53%
\$90,001-100,000	22.97%	44.15%
\$100,001-120,000	19.48%	36.15%
\$120,001-over	9.42%	21.96%

At every income level there are fewer percentages of White couples who pay a marriage penalty than do African-American couples. Conversely, at every income level there are higher

¹⁷ See *id.* at 1502 (reprinted with permission of publisher).

percentages of African-American couples who pay a marriage penalty than do White couples. You will note, however, that of all the White couples, at least a quarter of those in households with between \$50,000 and \$90,000 total income pay the marriage penalty. With respect to the African-American couples, almost half of those households earning between \$60,000 and \$90,000 pay the marriage penalty.

5. Marriage Penalty/Bonus in Black¹⁸

Table 1.6 AFRICAN-AMERICAN HOUSEHOLD INCOME ALLOCATION BETWEEN HUSBAND AND WIFE					
Income Levels	A 100%/0% - 90%/10%	B 90%/10% - 80%/20%	C 80%/20% - 70%/30%	D 70%/30% - 60%/40%	E 60%/40% - 50%/50%
\$0 to 10,000	84.06	3.60	3.70	3.57	5.06
\$10,001 to 20,000	63.25	7.32	8.02	8.76	12.65
\$20,001 to 30,000	38.81	7.75	12.20	16.13	25.11
\$30,001 to 40,000	26.07	7.76	12.94	20.08	33.16
\$40,001 to 50,000	15.42	6.87	13.70	25.68	38.33
\$50,001 to 60,000	9.22	6.13	14.00	27.45	43.21
\$60,001 to 70,000	6.37	4.57	14.13	28.17	46.76
\$70,001 to 80,000	6.59	4.21	11.73	28.23	49.23
\$80,001 to 90,000	5.88	3.81	14.62	26.17	49.53
\$90,001 to 100,000	6.55	7.52	14.90	26.88	44.15
\$100,001 to 120,000	9.24	7.60	18.35	28.66	36.15
\$120,001 & over	37.40	14.54	14.12	11.98	21.96

As you can determine, the greatest percentages of African-Americans are found in Column E, which is the greatest marriage penalty for household income between \$30,000 and \$120,000. In the over \$120,000 household income level, the greatest percentages of African-Americans are found in Column A, which is the greatest

¹⁸ *Id.* at 1504 (reprinted with permission of publisher).

marriage bonus column. At the under \$30,001 category, the greatest percentage of African-Americans are found in Column A. Yet that category, I believe, is skewed by the Earned Income Tax Credit (EITC) which has severe marriage penalties.¹⁹ As a result, most families eligible for the EITC are in single wage-earner households, even though one might expect to observe two wage earners.

If you compare the percentages of African-American in the marriage penalty in column E with the African-Americans in the marriage bonus in column A, you can observe the significantly greater numbers paying the marriage penalty.

6. Marriage Penalty/Bonus in White²⁰

Table 1.7 WHITE HOUSEHOLD INCOME ALLOCATION BETWEEN HUSBAND AND WIFE					
Income Levels	Contribution Percentages				
	A 100%/0%- 90%/10%	B 90%/10%- 80%/20%	C 80%/20%- 70%/30%	D 70%/30%- 60%/40%	E 60%/40%- 50%/50%
\$0-10,000	87.49%	2.85%	2.89%	2.80%	3.97%
\$10,001-20,000	69.11%	6.88%	7.18%	7.26%	9.58%
\$20,001-30,000	53.21%	9.27%	10.87%	11.47%	15.18%
\$30,001-40,000	41.63%	10.77%	12.79%	15.43%	19.38%
\$40,001-50,000	32.87%	10.86%	14.39%	18.55%	23.33%
\$50,001-60,000	27.00%	10.63%	14.77%	20.88%	26.72%
\$60,001-70,000	24.15%	9.80%	16.44%	21.44%	28.17%
\$70,001-80,000	26.06%	9.27%	14.63%	22.25%	27.79%
\$80,001-90,000	26.54%	10.27%	15.98%	20.04%	27.17%
\$90,001-100,000	35.98%	9.78%	14.52%	16.74%	22.97%
\$100,001-120,000	36.61%	12.57%	15.17%	16.17%	19.48%
\$120,001-over	58.88%	13.07%	10.47%	7.70%	9.42%

As you can see, there are far greater percentages of White households in marriage bonus category A than in marriage penalty

¹⁹ See *id.* at 1479 (stating that “[p]roportionately, however, the marriage penalty is greatest for low-income individuals due to the operation of the earned income tax credit”); see also Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533, 559-64 (1995).

²⁰ See Brown, *supra* note 1, at 1505 (reprinted with permission of publisher).

category E. In the \$60,001 – \$90,000 household incomes levels there are more White couples paying the marriage penalty than are receiving the marriage bonus.

7. Summary

In conclusion, African-American households are more likely to pay a marriage penalty, and White households are more likely to receive a marriage bonus. Middle-income White households are most likely to pay a marriage penalty. Upper-income African-Americans are most likely to receive a marriage bonus. Middle-income African-Americans are least likely to receive a marriage bonus. As the data shows, women can be placed in one of the following three categories: (i) those that never work in the paid labor market; (ii) those that sometimes work in the labor market; and (iii) those that always work in the paid labor market. Those women most likely to never work or sometimes work in the paid labor market are White and those women most likely to always work in the paid labor market are African-American.

II. LEGISLATIVE PROPOSALS IN BLACK AND WHITE

A. Increasing the Standard Deduction

This legislative solution would increase the standard deduction for joint returns to a level exactly twice that of an individual return. Increasing the standard deduction would theoretically reduce the marriage penalty, and potentially increase the marriage bonus. The proposal would not eliminate the marriage penalty for those filing itemized deductions, it would, however, assist those households currently paying the marriage penalty who use the standard deduction.

The IRS keeps statistics based upon the number of married taxpayers who file with itemized deductions and those who file with

the standard deduction, although we have no racial breakdowns. In 1996, of those married and filing jointly, approximately 54 percent filed using itemized deductions, and 46 percent filed using the standard deduction. Accordingly, based on 1996 tax return data, the majority of taxpayers filing joint returns would not be greatly assisted by this proposal. Further, we have no data as to whether it is more or less likely that White tax payers or African-American taxpayers file using the standard deduction or itemized deductions.

B. Adjusting the Earned Income Tax Credit

The effectiveness of this proposal will depend upon which couples benefit from the EITC. Very little scholarly research has been done that examines who actually benefits from the EITC. My data suggests, however, that the majority of those households eligible for the earned income tax credit are in single wage earner households.

One legislative solution would increase the EITC phaseout — the point at which taxpayers begin to lose their credit based upon total household income. This would decrease the marriage penalty to which low-income taxpayers are subject. Given the similarity between White and Black households at the lower income levels, this proposal should help both groups.

C. Widening the Tax Brackets for Joint Tax Returns

This proposal will virtually eliminate the marriage penalty except regarding the EITC, assuming the Internal Revenue Code's other provisions are amended to ensure that married couples receive the benefit of twice what a single individual would receive. This proposal will also increase the marriage bonus for many families already receiving the marriage bonus. As the earlier part of this article showed, White households are disproportionately receiving the marriage bonus. One would expect this proposal to even further increase the number of White families receiving the marriage bonus.

This proposal, by eliminating the marriage penalty, would

assist African-American dual earner couples by reducing their tax liability. What this proposal will not do is increase the number of African-American households receiving the marriage bonus (unless they are already receiving the bonus). Until African-Americans earn sufficient wages to allow for an increase in the number of African-American single wage earner households, this proposal will do little to increase marriage bonuses to African-American households.²¹

D. Deduction/Credit for Dual Earner Couple

This proposal perpetuates the myth that all American households fall within the primary/secondary model such that there is one primary wage earner and one marginal, secondary wage earner.²² In African-American households, many spouses are co-providers. Similarly with respect to middle income White households, White spouses are co-providers.

This proposal, however, would not increase the number of households receiving a marriage bonus. This proposal would most likely have a positive impact on African-American and White families who currently pay a marriage penalty. Yet, the \$50,000 phaseout limit on income (complete bar for households receiving \$60,000) renders ineffective the gains that might otherwise accrue to those African-American and White families earning over \$60,000.

²¹ <u>Category - Married</u>	<u>Mean Wage - 1990</u>
White men	\$39,389
African-American men	\$27,026
White women	\$23,493
African-American women	\$20,693

BUREAU OF THE CENSUS, U.S. DEP'T OF COM., MONEY INCOME OF HOUSEHOLDS, FAMILIES, AND PERSONS IN THE UNITED STATES: 1990, CURRENT POPULATION REP., tbl. 28 Series P-60, No. 174, (1991) (Table of Marital Status - Persons 18 Years Old and Over, by Total Money Income in 1990, Race, Hispanic Origin, Sex, and Work Experience in 1990).

²² See Brown, *supra* note 1, at 1507 (concluding that "[t]he primary/secondary paradigm does not fit most households").

Remember, the greatest percentage of White households paying the marriage penalty was in the \$60,000-\$90,000 household income category.

E. Allowing Individual Tax Calculations

The proposal for allowing individual tax calculations would allow each spouse to calculate taxable income separately based upon an allocation of income, deductions and credits attributable to each spouse. The tax rate to be applied would be the same as that for a single taxpayer. This proposal would eliminate the marriage penalty, as couples would file individually if a joint return would result in a higher tax liability. It would still permit marriage bonuses which disproportionately benefit White households, particularly upper-income White households.

CONCLUSION

In conclusion, while it is important to eliminate the marriage penalty, it is more important for husbands and wives to make decisions about labor force participation without the influence of federal tax laws. What would the average American married household look like if men and women and African-Americans and Whites all earned the same wages? Would we see more women who are sole wage earners? Would we see more stay-at-home dads? How much of what we see today is merely a societal construct reinforced by and reflected in the Internal Revenue Code? Whatever legislative solution is adopted to solve the marriage bonus/penalty issue, it must consider the differences in American households.